

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1800 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KRISHNAKANT HIRALAL PARIKH

Versus

VISNAGAR NAGARIK SAHKARI BANK LTD.

Appearance:

MR YOGESH S LAKHANI for Petitioner
MR NIRAV C THAKKAR for Respondent Nos.2 to 5
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/02/2000

ORAL JUDGEMENT

1. Rule. Mr.Thakkar waives service of the rule on behalf of the respondent nos. 2 to 5.

2. Having heard the learned counsel for the parties,

I am satisfied that the learned trial court has committed a serious illegality in exercise of its jurisdiction in passing of the impugned order. When the guarantor is there and the decree has been passed for the amount taken on loan by the judgment debtors from the Bank, so long as the decree is not satisfied, interest of the guarantor as well as decree holder is to be protected. In case the judgment debtors are restrained from transferring the Flat No.9B / North View Flats, 2nd Floor, Plot No.4, Near Sant Xaviers' College, Navrangpura, Ahmedabad, it is in the larger interest of the decree holder also.

3. Learned counsel for the judgment debtors gives out that settlement talk is going on between the judgment debtors and decree holder. If, settlement is there and ultimately decree is satisfied, then, this order will not stand and the property shall stand free from this restrain order. In case the judgment debtors are allowed to transfer this property, the liability to pay the decretal amount may fall upon the guarantors. In these facts and circumstances in case the order of the court below is allowed to stand it will occasion a failure of justice and will cause irreparable injury to the petitioner.

4. In the result, this civil revision application succeeds and the same is allowed. The judgment debtors are restrained from transferring the aforesaid Flat till the decree of the decree holder is satisfied. Civil revision application and the rule therein stand disposed of accordingly with no order as to costs.

(pathan)